

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1752 OF 1998

Madhuri Bhaskar Sali,)
4081, Budhwar Peth, Nashik.) ... Petitioner

Versus

1. The State of Maharashtra, through its)
Secretary, Ministry of Education,)
Mantralaya, Mumbai - 400 032.
2. The Head Master, Adash Marathi Shala,)
Nashik, C/o. J.S. Rungtha High School,)
Nashik.)
3. The Administrative Officer, Municipal)
School Board, Nashik Municipal)
Corporation, Nashik.) ... Respondents

Mr. P.N. Joshi for the petitioner.

Ms. P.S. Cardozo, A.G.P. for respondent 1.

Mr. S.S. Deshpande for respondent 2.

**CORAM : SMT. RANJANA DESAI &
SMT. V.K. TAHILRAMANI, JJ.**

DATED : 31ST AUGUST, 2006.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. The petitioner claims that she belongs to backward community. She possesses H.S.C. Certificate. She has also passed her D.Ed. Examination

from Dr. Harisingh Gour Vishwavidyalaya, Sagar, which was formerly known as University of Sagar, M.P. The said college and University happen to be in Burhanpur in Madhya Pradesh. The petitioner's case is that the said diploma is equivalent to D.Ed. of Pune University.

2. It is the petitioner's case that she learnt that there was a vacancy in the School viz. Adarsh Marathi Shala at Nashik and, therefore, she applied for appointment as a teacher in the said School. On 26/6/1995, respondent 2 - Head Master, Adarsh Marathi Shala, Nashik appointed her as a teacher in the said School. A copy of the appointment order is annexed as Exhibit-"B" to the petition. It clearly states that since Smt. Shalini Shrikrshna Amankar was on leave from 26/6/1995 to 28/7/1995 on account of illness, the petitioner was appointed temporarily on leave vacancy for the said period. It appears that thereafter, the petitioner was continued in the said leave vacancy till 5/8/1995. A copy of the confirmation order dated 11/10/1995 is annexed as Exhibit-"C" to the petition, which indicates that the petitioner was continued in the leave vacancy upto 5/8/1995, because Smt. Amankar had extended her leave.

3. According to the petitioner, by letter dated 5/9/1996, respondent 2 was informed that since the petitioner was not having D.Ed. from Pune University and since she was a diploma holder from University of Burhanpur (M.P.), her appointment cannot be approved. By letter dated 19/12/1996, respondent 2

informed the petitioner that since respondent 3 - the Administrative Officer, Municipal School Board, Nashik Municipal Corporation, Nashik, has refused the approval, the petitioner cannot be continued in the said School and is not entitled to any wages even for the work done by her. It appears that thereafter, the petitioner made several representations to respondents 2 and 3 for payment of her salary. However, she did not receive any favourable response. It is in these circumstances that the petitioner has approached this court. The petitioner has prayed for a declaration that the action of respondent 3 in discontinuing the petitioner's appointment as a teacher only on the basis that she has passed a Diploma in Education from a University in the State of M.P. and not from Pune University is illegal. The petitioner has also prayed that it may be declared that the petitioner is entitled to be appointed as a teacher on the basis of the Diploma in Education from the University in the State of M.P. A further prayer is also made for a declaration that the action of respondents 2 and 3 in not paying the salary and other benefits to the petitioner for the period for which the petitioner has actually worked is illegal. The petitioner has also prayed that the said respondents be directed to make payment of salary to the petitioner forthwith.

4. It is averred in the petition that the syllabi of both the Universities i.e. Dr. Harisingh Gour University, Sagar, M.P. and University of Pune for the D.Ed. course is identical and, hence, the petitioner could not have been

discontinued on the ground that she possesses a diploma of a University in M.P.

5. We have heard Mr. Joshi, the learned counsel appearing for the petitioner. He has reiterated the averments made in the petition. The learned counsel drew our attention to the judgment of this court in Narendra s/o. Sakharam Jadhav v. State of Maharashtra & Ors., 2001 (Supp.) Bom.C.R. 386, where this court was considering the effect of de-recognition of the Two Year Diploma in teaching course of Dr. Harisingh Gaur University, Sagar and Devi Ahilya University, Indore. The learned counsel pointed out that after referring to several judgments of different Benches of this court, in that judgment, after relying on the judgment of the Supreme Court in Suresh Pal & Others v. State of Haryana & Others, AIR 1987 SC 2027, this court held that when a person joined the course when it was recognised by the State Government, it would be unjust to tell him at a future point of time that since in the meantime the course was de-recognised, the certificate obtained by him would be of no use to him. The learned counsel pointed out that in that case, this court reiterated that those who had joined the diploma course of Dr. Harisingh Gour University before 31/5/1993 i.e. the date on which it was de-recognised and on completion of the said diploma course were appointed in the State of Maharashtra after 31/5/1993 as teachers on the basis thereof will be protected. The learned counsel contended that even in this case, the

petitioner had jointed the diploma course of Dr. Harisingh Gaur University on 17/7/1992 i.e. prior to 31/5/1993. She has completed the said course on 17/8/1994. She was appointed in Adarsh Marathi Shala at Nashik on 26/6/1995 and, therefore, her services could not have been terminated on the grounds that the diploma of Dr. Harisingh Gaur University, Sagar was de-recognised and it was not equivalent to the diploma of Pune University.

6. We have also heard Ms. Cardozo, the learned A.G.P. appearing for the State of Maharashtra. She has drawn our attention to the affidavit of Sahebrao Anandrao Patil, Administrative Officer, Municipal School Board, Nashik Municipal Corporation, Nashik. She submitted that the petitioner was appointed in the leave vacancy for a temporary period. The learned counsel submitted that the petitioner's services came to an end the moment the said period got over and there was no question of illegally terminating her services. She submitted that the petitioner has not made out any case for appointment as a teacher.

7. In our opinion, the reliance placed by the learned counsel on Narendra s/o. Sakharam Jadhav' case (supra) is apt. Since the petitioner had joined the diploma course of Dr. Harisingh Gour University, M.P. prior to 31/5/1993 and she completed the course in the year 1994 and was appointed on the basis thereof in respondent 2 School on 26/6/1995, she cannot be

discontinued from service on the ground that the diploma course of Dr. Harisingh Gour University was not recognised in the State of Maharashtra. However, in the facts of this case, it is not necessary for us to go into that question. It is an admitted position that the petitioner was appointed in the leave vacancy and once the period of leave vacancy was over, her services could not have been continued. In the circumstances, we do not find any merit in the petition. The petition deserves to be dismissed. Needless to say that if any amount is due to the petitioner for the period for which she has worked in Adarsh Marathi Shala, Nashik, respondent 3 shall pay the said amount to her in accordance with law. Petition is dismissed.

[SMT. RANJANA DESAI, J.]

[SMT. V.K. TAHILRAMANI, J.]